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In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 366

UNITED STATES OF AMERICA, APPELLANT

v.

HENRY PRESTON COVINGTON

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court dated March 27, 1968, dismissing the indictment (R. 6–11) is reported at 282 F. Supp. 886. The opinion dated May 6, 1968, denying reconsideration (R. 20), is not reported.

JURISDICTION

The order of the district court, dismissing the indictment on the ground that prosecution under the statute (26 U.S.C. 4744(a)(1)) would either violate the privilege against self-incrimination or fall outside the terms of the statute, was entered on May 6, 1968 (R. 20). Notice of appeal to this Court was filed on June 4, 1968 (R. 21). This Court noted probable juris-

diction on October 21, 1968 (R. 22). Jurisdiction rests on 18 U.S.C. 3731.

STATUTES AND RULES INVOLVED

The relevant statutes and rules (26 U.S.C. 4741–4744, 4751–4753, 4771, 4773, 4775, 6107, 7237(e); 26 C.F.R. 152.19–152.20, 152.22–152.23, 152.30–152.36, 152.61–152.68, 152.105, 152.131) are set forth in the Appendix, *infra*, pp. 27–40.

QUESTIONS PRESENTED

1. Whether the provision of the Marihuana Tax Act (26 U.S.C. 4744(a)(1)) prohibiting the acquisition of marihuana by one who has not paid the tax imposed by 26 U.S.C. 4741(a)(2) impinges upon the privilege against self-incrimination when the statute is construed and applied as not permitting pre-payment of the tax by those whose handling of marihuana would violate state law.

2. Whether Congress has authorized prosecution under 26 U.S.C. 4744(a)(1)—punishing the acquisition of marihuana by one who has failed to pay the tax imposed by 26 U.S.C. 4741(a)(2)—when the defendant could not have pre-paid the transfer tax because not lawfully entitled to register as a marihuana handler.

STATEMENT

Appellee was charged in a one-count indictment (R. 3) drawn under the Marihuana Tax Act, alleging that he violated 26 U.S.C. 4744(a)(1) by obtaining 737.1 grams of marihuana without having paid the

transfer tax imposed by 26 U.S.C. 4741(a).[1] On appellee's motion (R. 4–5), the trial court dismissed the indictment, holding that, under the principles expressed in *Marchetti* v. *United States,* 390 U.S. 39, *Grosso* v. *United States;* 390 U.S. 62, and *Haynes* v. *United States,* 390 U.S. 85, his privilege against self-incrimination constituted a complete defense to the prosecution (R. 6–11). On motion for reconsideration (R. 12–19), the government urged that the Marihuana Tax Act, and particularly the acquisition provisions under which appellee was indicted, do not, as administratively construed and applied, compel any incriminatory disclosures, since persons who are not lawfully registered or registrable are not allowed to pre-pay the tax and obtain an order form to sanction the transfer of marihuana. The government argued that, under this construction, the statute operates simply as a bar to certain conduct—*i.e.,* the

[1] Section 4741(a) imposes transfer taxes at two rates. Subparagraph (a)(1) imposes a $1 per ounce tax on all marihuana transfers to persons who are registered under the terms of Sections 4751–4753; subparagraph (a)(2) imposes a $100 per ounce tax on transfers to nonregistered persons.

Although the indictment is not explicit, it has been assumed by all parties that appellee was not registered under the provisions of 26 U.S.C. 4751–4753. Moreover, under 26 U.S.C. 7491, in the absen of proof to the contrary, a defendant is presumed not to have complied with the registration provisions of the Act.

If he had been registered, then there clearly could be no possible violation of the privilege against self-incrimination, since federal registration is conditioned upon a showng that the activity or business to be conducted by the registrant is lawful where conducted. See 26 C.F.R. 152.22, 152.23 (App. *infra,* pp. 35–36).

acquisition of marihuana by one who is not registered, whether he can lawfully register or not—and thus in no sense touches upon the values protected by the privilege against self-incrimination. At that juncture, the district court alternatively ruled that if appellee could not, as urged by the government, pay the tax, there was no basis for the indictment (R. 20).

SUMMARY OF ARGUMENT

I

A. The provision of the Marihuana Tax Act under which appellee was indicted prohibits the acquisition of marihuana by one who has not paid the $100 per ounce transfer tax imposed upon unregistered transferees. The agencies which administer this Act have consistently construed and administered it *in pari materia* with counterpart provisions found in the Harrison Narcotic Act of 1914. Under this construction, unregistered persons—like appellee—would not be permitted to obtain order forms authorizing the acquisition of marihuana even if they were willing to pay the $100 per ounce tax. Rather, the agencies have interpreted the Congressional plan as designed to keep marihuana out of the hands of those who would use it for illicit uses. For this reason, only those whose handling of the drug would be lawful under local law are allowed to register and thus to qualify for federal order forms upon prepayment of the marihuana transfer tax. As to all other persons, the Act constitutes a direct and absolute federal prohibition against the acquisition of marihuana.

This administrative construction is in complete harmony with the intent of Congress. Concerned about the use of marihuana for smoking or other illicit purposes, Congress imposed a $100 per ounce tax on transfer to unregistered persons—*i.e.*, those who, it foresaw, would in all probability use marihuana for illicit purposes—with the object and expectation that the tax rate would be completely prohibitive. The regulations adopted by the administrative agencies effectuate that clearly expressed legislative goal.

Congress chose to write the prohibition in the form of a taxing statute because it was then concerned about the reach of its constitutional powers. Although Congress may have been overly cautious in framing the prohibition as it did, it is nevertheless clear that Congress did intend to prohibit all transfers of marihuana to unregistered persons, and to punish those who violated that command. Under the statute as enacted and administered, the penal provisions do apply to the acquisition of marihuana by those who are not eligible for authority to obtain the drug.

B. As construed and applied, the statute under which appellee was indicted presents no conflict with the privilege against self-incrimination. Unregistered persons like appellee are not compelled to pay the tax; indeed they are not even permitted to do so. Thus, the statute calls for no incriminatory disclosures, since only those whose handling of the drug would be lawful are expected and allowed to register, pre-pay the transfer tax, and obtain order forms. Any claim that appellee proceeded to acquire marihuana despite the Act's prohibition only because he thought

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he had a constitutional privilege to do so is premature, since this case is here on appeal from the dismissal of an indictment based on a threshold question of law. An argument based on fear of incrimination is at most a defense that must be developed at trial. Moreover, any such claim may be immaterial; fear of incrimination does not provide a valid defense absent a showing that an attempt to pay the transfer tax would in fact have presented a "real" hazard of incrimination. In light of pertinent statutory provisions and administrative practice it is unlikely that such a showing could be made.

II

A. Congress did not exceed its constitutional powers in legislatively prohibiting transfers of marihuana to those who would use it in the illicit market and who would obviously attempt to evade payment of any taxes imposed upon all persons handling marihuana. Similar provisions in the Harrison Narcotic Act have twice been held constitutional by this Court as against a similar claim. *United States* v. *Doremus*, 249 U.S.C. 86; *Nigro* v. *United States*, 276 U.S. 332. Although less revenue is collected under the Marihuana Tax Act than under the Harrison Narcotic Act, that monetary distinction does not invalidate the otherwise proper legislation.

B. While the published regulations amply explain the administrative implementation of the Act, it is unnecessary to look beyond the plain words of the statute to recognize the elements of criminal liability. The Act on its face fairly notifies any person considering obtaining marihuana that it is a federal crime

to do so unless a transfer tax has first been paid. It is immaterial whether, had he sought to pay the tax and to obtain an order form, his attempt would have been rejected on grounds of ineligibility. The acquisition of non-tax-paid marihuana is what the statute outlaws.

C. Congress intended that the difference in transfer tax rates as between registered and unregistered transferees be enforced in the same manner throughout the United States. The taxing measure applies uniformly to similarly situated members of each class of taxpayers and thus conforms to the geographical "uniformity" requirement of the Constitution. A taxing statute does not fall short of the requisite uniformity because its impact in each state might vary because of differences in state or local law.

ARGUMENT

The statute under which appellee was indicted (26 U.S.C. 4744(a)(1)) is part of a comprehensive taxing plan (Marihuana Tax Act of 1937) designed, on the one hand, to raise revenues by taxing legitimate dealings in marihuana and, on the other, to curb all illegitimate traffic in that drug. The question of the validity of a companion statute (26 U.S.C. 4744(a)(2)), in light of the privilege against self-incrimination, is before this Court in *Timothy F. Leary* v. *United States*, No. 65, this Term. Although the two statutes differ somewhat in focus—Section 4744(a)(2) prohibits the *transportation* of marihuana by one who has acquired it without having paid the required tax, whereas 26 U.S.C. 4744(a)(1) simply prohibits

the *acquisition* of marihuana without having paid the tax—there is no significant distinction between the two under Fifth Amendment standards. The defendants in both cases have claimed that application for and acquisition of an order form—a step necessary to payment of the transfer tax—would have incriminated them, and thus that the convictions are invalid under the principles set forth in the decisions in *Marchetti, Grosso,* and *Haynes, supra.* We have fully explained the government's position on that contention in our brief in *Leary* and we shall not repeat the same arguments in detail here. After summarizing our views on the self-incrimination issue, we will discuss the contention that if the statute is construed as we suggest then the present indictment fails to state an offense. In addition, we take this opportunity to discuss several of the contentions raised in the brief of the American Civil Liberties Union as *amicus curiae,* which has been submitted in connection with *Leary* but which *amicus* asked also to be considered in the present case.

I

THE MARIHUANA TAX ACT, AS CONSTRUED AND APPLIED, DOES NOT COMPEL THE DISCLOSURE OF ANY INFORMATION WHICH COULD BE INCRIMINATORY

A. ALTHOUGH DRAWN AS A TAX STATUTE, THE ACT WAS INTENDED, AND HAS BEEN PROPERLY CONSTRUED ADMINISTRATIVELY, TO PRECLUDE THE ACQUISITION OF ORDER FORMS AND PRE-PAYMENT OF THE TRANSFER TAX BY NON-REGISTRANTS

1. As set out more fully in our brief in *Leary* (pp. 13–16), Congress, in enacting the Marihuana Tax Act

in 1937, evinced a dual purpose: to raise revenue by imposition of an occupational and transfer tax on *legitimate* dealers in marihuana, and to eliminate the widespread use of marihuana by smokers and addicts.[2] In order to achieve this two-fold objective, the Act imposes an annual occupational tax on all persons who desire to handle marihuana legitimately (26 U.S.C. 4751; 26 C.F.R. 152.19), following the classifications of permissible handlers under the Uniform Narcotic Drug Act (9B Uniform Laws Ann., pp. 409 *et seq.*). The only persons who are allowed to register and pay this occupational tax are those who are lawfully qualified to deal in marihuana under state and local law (26 C.F.R. 152.22–152.23). In order to aid in the collection of these taxes, and to prevent the transfer of marihuana into illicit channels where the tax could not conveniently be assessed, the occupational tax and registration requirements are complemented by restrictive transfer provisions. Thus the Act, *on its face*,[3] imposes a tax of $100 per ounce upon a transferee who has not paid the occupational tax and registered under the Act's requirements (26 U.S.C. 4741(a)(2); 26 C.F.R. 152.61–152.62).[4]

To effectuate this same policy the Act makes unlawful any transfer of marihuana (with ~~irrelevant~~ irrelevant exceptions), whether to a registrant or non-registrant,

[2] See, *e.g.*, S. Rep. No. 900, 75th Cong., 1st Sess., p. 2 (1937) (hereafter "S. Rep."), H. Rep. No. 792, 75th Cong., 1st Sess., p. 1 (1937) (hereafter "H. Rep.").

[3] See discussion *infra*, pp. 17–18.

[4] Transfers to registered persons are taxed at a rate of $1 per ounce (26 U.S.C. 4741(a)(1)).

unless the transfer is carried out in pursuance of a written order from the transferee on a form issued by the Secretary of the Treasury (26 U.S.C. 4742; 26 C.F.R. 152.66).[5] In order to obtain the order form, which is in turn given to his seller, the prospective transferee must submit to the district director of Internal Revenue an application stating his name and address and that of the proposed transferor, a description, including the quantity, of the marihuana desired to be obtained, and the transferee's registry number, if so registered under the applicable provisions. A money order or check to cover the amount of the transfer tax must be remitted with the application (26 U.S.C. 4741(b), 4742(c); 26 C.F.R. 152.63, 152.66). If the application is accepted by the district director, he will affix a stamp—which represents payment of the appropriate tax (26 U.S.C. 4771; 26 C.F.R. 152.63–152.64)—to the order form and send it to the transferee for use in the transaction. Section 4744(a)(1)—under which appellee was indicted—makes it a crime for any person required to pay the transfer tax to obtain marihuana without having paid the appropriate tax.[6]

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[5] The Act exempts from the transfer tax and order form requirements certain medical, industrial, and governmental transfers (see 26 U.S.C. 4742(b)(1)—4742(b)(5)).

[6] Section 4744(a)(2)—which prohibits transportation of non-tax-paid marihuana by the transferee, and under which Leary was convicted—was added as part of the Narcotic Control Act of 1956 in order to facilitate the proof of venue. See H. Conf. Rep. No. 2546, 84th Cong., 2d Sess., p. 12; H. Rep. No. 2388, 84th Cong., 2d Sess., p. 1; S. Rep. No. 1997, 84th Cong., 2d Sess., p. 8.

2. Although the Act is on its face susceptible of a construction that would sanction sales of marihuana to non-registered persons by issuing them order forms upon payment of the $100 transfer tax, the two agencies charged with administering the Act (the Internal Revenue Service and the Bureau of Narcotics) have consistently, since passage in 1937, construed the Marihuana Tax Act *in pari materia* with the Harrison Anti-Narcotic Act of 1914 [7] and have developed a regulatory mechanism which prevents the issuance of order forms to those who are not registered and who cannot qualify for registration because their intended activities would violate state law.[8]

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[7] Under the Harrison Act, transfers of narcotic drugs must be made pursuant to an order form given by the transferee to the transferor. 26 U.S.C. 4705(a). Subsections 4705 (f) and (g) expressly provide that such forms will be given only to those persons who are registered and only for use in connection with a "lawful" business or "legitimate" profession. The constitutionality of these provisions was upheld in *United States* v. *Doremus*, 249 U.S. 86; see, also, *Nigro* v. *United States*, 276 U.S. 332.

[8] The Internal Revenue Service has advised us that it has no record that there has ever been an application for order forms submitted by a non-registrant, and the Service therefore never formulated a policy, in the form of a regulation or operating procedure, for processing such an application. They have pointed out, however, that the only provisions for disclosure of information by district directors are inapplicable to permit disclosure of the fact or the content of an application from a non-registrant. (See 26 U.S.C. 4773 and 26 U.S.C. 4775, which apply only to those who *are* registered. See, also, 26 U.S.C. 6107; 26 C.F.R. 152.104, 152.105, 152.131; compare 26 U.S.C. 7237(e).) Moreover, they have advised us that, since the decisions in *Marchetti*, *Grosso*, and *Haynes*, district directors have been instructed that if an application for order forms is sub-

This administrative construction is reflected in the regulations that were jointly promulgated by the Commissioner of Narcotics and the Commissioner of Internal Revenue, and approved by the Secretary of the Treasury, in 1937.[9] The regulations provide that applications for order forms must be signed by the same person who signed the application for registration,[10] and specify that before the application will be honored the district director must be satisfied, on the basis of a comparison of the signature on the application for an order form with that on the application for registration, that the order form application is "authentic." [11] As a result of these requirements, it is not possible for anyone to obtain marihuana order forms unless he has first registered.[12] And as we have

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mitted by an unregistered person, the application should be treated as confidential and no disclosure made to any enforcement or investigative agencies either of the contents of the application or of the fact that it has been submitted. District directors have been ordered merely to return the application with an explanation to the effect that, since the applicant is not registered, he cannot qualify for an order form.

[9] 2 Fed. Reg. 2054 *et seq.* (1937); now 26 C.F.R. Pt. 152.

[10] Article 47, 2 Fed. Reg. 2059 (1937); now 26 C.F.R. 152.67.

[11] Article 48, 2 Fed. Reg. 2059 (1937); now 26 C.F.R. 152.68.

[12] In its *amicus* brief, the American Civil Liberties Union disputes the administrative construction of this regulation as requiring that the application for an order form (an integral part of process of pre-paying the transfer tax) be signed by the same person who signed the application for registration as required by 26 C.F.R. 152.25. *Amicus* argues that since the requirement is preceded by the word, "Generally", the inclusion of this conditional word means that in some instances registration is not a condition to the acquisition of an order form and pre-payment of the tax. But the regulations themselves set forth the only situation in which a departure from

seen (*supra*, p. 3), only those whose handling of marihuana would be lawful are eligible for registration.

Thus, under the Marihuana Tax Act and implementing regulations, only persons whose handling of marihuana would otherwise be lawful under state or local law are expected—and allowed—to obtain federal authorization to engage in marihuana transactions by pre-paying the transfer tax and obtaining order forms. Persons who, like appellee,[11] are neither registered nor qualified to seek registration can comply with this Act only by abstaining from any involvement with mari-

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the "generally" required procedure will be tolerated. Thus, under Section 152.67, when it would be "impracticable" for the person who signed the registration application to sign the application for an order form, the application for the form may be signed by another person—"provided a power of attorney authorizing such other person to sign the applications for order forms has previously been filed with and approved by the district director." Section 152.68 makes it undeniable that no casual or *ad hoc* applications for order forms will be honored; it states exhaustively that the signature on an application for forms "shall be compared with that appearing on the application for registration *or* in the power of attorney (see § 152.67)" before the application will be honored. (Emphasis added.)

Moreover, even assuming an ambiguity in the regulations, the Bureau of Narcotics and Internal Revenue Service have always construed these regulations as limiting issuance of order forms to those who are registered under the provisions of 26 U.S.C. 4751–4753. This construction by the agencies which have promulgated the regulations is entitled to controlling weight. *Udall* v. *Tallman*, 380 U.S. 1, 4; *Bowles* v. *Seminole Rock Co.*, 325 U.S. 410, 414.

[11] Under 26 U.S.C. 7491, in the absence of production of evidence by a defendant that he is a marihuana registrant and has complied with the order form requirements, the contrary will be presumed. See note 1, *supra*.

huana. As to this class the Act stands as a direct and absolute federal prohibition against obtaining, concealing, transporting, or transferring marihuana.

3. The Court below ruled (R. 20), and *amicus* argues here, that such a construction is contrary to Congressional intent. But the legislative history demonstrates, on the contrary, that the settled administrative understanding of the Act is fully in accord with, and effectively implements, the stated goals of the legislation.

Although Congress concededly cast the controls on marihuana in the form of a taxing statute,[14] it is clear that Congress nevertheless intended, not only to raise revenue by taxing legitimate transfers of marihuana, but also to prohibit absolutely all transfers of marihuana to unregistered persons—*i.e.*, those who would most likely use the drug for illicit purposes. The Marihuana Tax Act was first proposed by the Department of the Treasury. A representative of the Department, testifying in favor of the bill at a congressional hearing, emphasized:

> In order to raise additional revenue *and to stamp out transfers to persons who would use marihuana for undesirable purposes*, it is further required that on any transfer which is required to be made in pursuance of an order form a transfer tax shall be imposed. This tax will be at the comparatively low rate of $1 per ounce, or fraction thereof, for transfers to registered persons, but at the rate of $100 per ounce, or fraction thereof, on transfers to persons who have not registered and

[14] The House Committee also observed, however, that various provisions of the bill could be sustained under the Commerce Clause or other powers of Congress. See H. Rep., p. 3.

> paid the special occupational tax whether or not they are required to register and pay the tax. It is made a criminal offense to acquire marihuana without having paid the transfer tax, when payment of such tax is required. *Since those who would consume marihuana are not eligible to register under the bill, and since the $100 tax on unregistered persons is designed to be prohibitive, such persons could not acquire marihuana.* [Emphasis added.][15]

In this light, it would be fatuous to impute to Congress a willingness to allow the wealthy to continue to indulge in the illicit trafficking of marihuana, while denying the same opportunity to those who were unable to afford the tax of $100 per ounce.[16] Congress simply intended to "stamp out" completely the use of marihuana for illicit purposes. The Internal Revenue Service and Bureau of Narcotics have administered the Marihuana Tax Act in accordance with that demonstrable intent to suppress *all* use of marihuana by smokers and addicts.

In our brief in *Leary* (p. 21), we suggested that Congress wrote the prohibition in the form of a taxing statute because it was concerned about the reach of its constitutional powers. As evidenced during the

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[15] *Hearings on H.R. 6385 before the House Committee on Ways and Means*, 75th Cong., 1st Sess. (hereinafter, *Hearings*), p. 8 (1937). Both Committees reported that one of the objectives of the legislation was to "prevent" marihuana from coming into the hands of persons who would put it to illicit uses. S. Rep., p. 3; H. Rep., p. 2.

[16] The prohibitive nature of the $100 tax was brought to the attention of Congress by testimony that the going market price for marihuana was $1 per ounce. *Hearings* at p. 14.

hearings before the House Committee on Ways and Means, the Department of the Treasury, sponsor of the bill, was concerned by the fact that it was only by a divided court that the express prohibitions contained in the Harrison Act (see 26 U.S.C. 4705(f) and 4705(g)), limiting the issuance of order forms to legitimate handlers of narcotic drugs under state and local law, had been sustained. See *United States* v. *Doremus*, 249 U.S. 86 (5–4), and *Nigro* v. *United States*, 276 U.S. 332 (6–3). The Treasury Department thus recommended—in what we suggest in retrospect was an abundance of caution—that the statute be framed as a taxing statute similar in form to the National Firearms Act which had that very year been sustained against constitutional challenge by a unanimous Court. *Sonzinsky* v. *United States*, 300 U.S. 506.[17] It may be that such caution was unnecessary, and that an explicit prohibition—the actual result of the Act's administration—which would have avoided the type of argument made here, might have proven preferable.[18] But speculation about the wisdom of the

[17] *Hearings*, at pp. 9–16. The Treasury Department chose not to amend the Harrison Act to apply to marihuana since there was a legitimate trade in marihuana hemp, and the Harrison Act did not provide the necessary flexibility to deal with the problems peculiar to marihuana. See *Hearings*, at p. 13.

[18] See the *Final Report* of the President's Advisory Commission on Narcotic and Drug Abuse, p. 32 (1963), wherein it was stated:

> The rate for transfers to persons who are not registered taxpayers is prohibitory. * * *
>
> * * * The amounts collected under the Harrison Act are relatively minor, and the Marihuana Tax Act yields nothing because the tax rate is deliberately prohibitive. Taxa-

particular course Congress has plotted to accomplish a lawful objective does not alter the fact that Congress *did* intend to prohibit any transactions in marihuana by unregistered persons. The administrative construction is thus in accord with congressional intent.

4. The district court held, as an alternative basis for dismissal, that if this construction is adopted "then there is no basis for the indictment" (R. 20). But this conclusion was apparently based upon the mistaken impression that the government regards the tax provisions of Section 4741(a) as "not applicable to the defendant" (*ibid.*). On the contrary, appellee is properly alleged to have been "a transferee of marihuana required to pay the transfer tax imposed by" Section 4741(a), whose acquisition of marihuana without having paid the tax is unlawful under Section 4744(a)(1). (See R. 3.) The government is not arguing, and the agencies have never found, that unregistrable individuals like appellee are not subject to the transfer tax; our position is only that such persons cannot *pre*-pay the tax and obtain an order form to sanction the transaction. But if the transfer is consummated nevertheless, it *is* a taxable transaction for which the transferee is civilly (and, as in this case, criminally) liable. The Internal Revenue Service does in fact frequently and

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tion is in fact only a guise for law enforcement and regulation.

The Advisory Commission then proceeded to recommend that existing narcotics controls relying on tax mechanisms be replaced by direct and express prohibitions based solely on the Commerce Clause. *Id.* at p. 36.

validly levy the tax on illicit transfers that have taken place, because the tax provisions do indeed apply to such transfers. See, *e.g.*, *United States* v. *Sanchez*, 340 U.S. 42; *United States* v. *Guerra*, 237 F. Supp. 1 (D. Colo.), affirmed, 371 F. 2d 584 (C.A. 10).[19]

B. SO CONSTRUED, THE MARIHUANA TAX ACT DOES NOT CONTEMPLATE, MUCH LESS COMPEL, SELF-INCRIMINATION

Given the construction which the Internal Revenue Service and Bureau of Narcotics have placed on the tax and transfer provisions of the Marihuana Tax Act for some thirty years, it becomes readily apparent that there is no real danger of self-incrimination. To accomplish "'literal and full compliance' with all the statutory requirements" (*Grosso* v. *United States*, *supra*, 390 U.S. at 65), all appellee need do was to abstain from dealing in marihuana. Appellee was not required to obtain an order form and pay the transfer tax; indeed, any attempt to do so would not even have been permitted.

The *amicus* brief argues that the transfer provisions *seem* to allow payment of the transfer tax, and thus that a typical defendant could reasonably fear incrim-

[19] The fact that the Service makes such assessments is not inconsistent with our position that Congress intended an absolute federal ban against transfers to unregistered persons. Once the transfer has been made in violation of the Act, the intent of Congress is in part effectuated by imposing a civil sanction on the offender. *United States* v. *Sanchez*, *supra*, 340 U.S. at 45. Analogously, for example, it is illegal to embezzle the property of another. But if a person does embezzle, the proceeds of his actions are taxable income. *James* v. *United States*, 366 U.S. 213.

ination upon making such an attempt. That claim however, is premature in the present case. This case is here on appeal from dismissal of an indictment on the ground that the indictment fails on its face to state an enforceable offense. The argument about fear of incrimination—even an "imaginary"[20] fear—would be, at most, an affirmative defense under *Grosso*. If it can be shown that defendant was prepared to pay the tax of $100 per ounce but did not do so because of fear of incrimination, that issue may possibly arise.[21] But the issue is not presented by the statute on its face. This Court has made clear that the taxing statutes considered in *Marchetti*, *Grosso*, and *Haynes*, are valid taxing statutes. It has held only that a *proper* claim of the privilege against self-incrimination constitutes a *defense* to a prosecution for failure to pay the tax.[22]

Even as a defense to a prosecution it is doubtful that a mere statement of fear or belief by a marihuana transferee that he might incriminate himself would

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[20] *Marchetti* v. *United States*, *supra*, 390 U.S. at 53.

[21] It is not presented in *Leary*, because the evidence showed beyond dispute that Leary was aware of the administrative construction of the Act, and that he refrained from paying the tax, not because of any fear of incrimination, but because of a belief that he had an absolute right to use marihuana as part of his religious exercises.

[22] Whether prosecutions like the present one are distinguishable from those presented in the gambling and firearms tax cases because here the prosecution is for engaging in affirmative conduct, not simply for failing to pay a tax, is an issue which would be presented if appellee sought to show that he personally feared that an attempt to prepay the transfer tax would have been incriminatory.

be valid. The risk of self-incrimination must be considered objectively. If an attempt to obtain an order from and pay the transfer tax would not have in fact been incriminating, then a conviction under the statute (26 U.S.C. 4744) is valid notwithstanding the defendant's mistaken belief that he might have incriminated himself. As the Court explained in *Marchetti, supra,* 390 U.S. at 53: "The central standard for the privilege's application has been whether the claimant is confronted by substantial *and 'real,' and not merely trifling or imaginary, hazards of incrimination.*" (Emphasis added.) See, also, *Rogers* v. *United States,* 340 U.S. 367.[23] Here there is in fact no danger of incrimination. The *amicus,* recognizing (Br. 21–23) that there is no authority for a district director to reveal the fact that there has been an attempt by an unregistered person to obtain an order form and pay the tax (see note 8, *supra,* p. 11), speculates that a district director would, notwithstanding the lack of such authority, turn the information over to prosecuting authorities. Such speculation hardly meets the burden of the defendant to show that, had he applied for the order form and attempted to pay the tax, he would have incriminated himself.

[23] In *Rogers,* a witness invoked the privilege and refused to answer certain questions before a federal grand jury. A district court judge ruled that the privilege was not available, and ordered her to answer. She refused, and was convicted of contempt. This Court agreed with the district court that the privilege was not applicable, and affirmed the conviction for contempt notwithstanding the defendant's mistaken belief that the privilege was applicable.

II

OTHER ISSUES RAISED BY THE "*AMICUS CURIAE*" ARE INSUBSTANTIAL

Other challenges to the tax and transfer provisions of the Marihuana Tax Act, as construed and applied by the Internal Revenue Service and Bureau of Narcotics, are insubstantial.

A. *The Act is a valid tax measure.* As construed and applied by the Internal Revenue Service and Bureau of Narcotics, the transfer provisions of the Marihuana Tax Act operate to achieve the same result as do the similar, express provisions in the Harrison Narcotic Act (26 U.S.C. 4705 (f) and (g)). That is, only those persons who are lawfully registered may obtain an order form and pre-pay the transfer tax; as to all other persons, the statute stands as an absolute federal prohibition against the acquisition of the regulated drug. The constitutionality of this result under the Harrison Act, as against a claim that it exceeds the power of Congress, has been upheld on two occasions by this Court. *United States* v. *Doremus,* 249 U.S. 86; *Nigro* v. *United States,* 276 U.S. 332. The *amicus* does not challenge the continued validity of these decisions, but suggests (Br. 16–17, 25–26) that the transfer provisions of the Marihuana Tax Act are distinguishable since *less revenue* is collected from registered marihuana handlers than from narcotics handlers under the Harrison Act. In the circumstances, however, the distinction is irrelevant. Although it is true that there are presently only 88 registrants under the Marihuana

Tax Act, it by no means follows that the tax was invalid when passed. In the year following the passage of that Act, there were 3,665 persons so registered. See Bureau of Narcotics, *Traffic in Opium and Other Dangerous Drugs*, pp. 60, 91 (1938) (producing approximately $4,000 in revenue). Although perhaps negligible, that amount of revenue sufficed to sustain the Act as an exercise of the tax power. See *United States* v. *Sanchez, supra;* cf. *Sonzinsky* v. *United States*, 300 U.S. 506.[24] We are aware of no principle of constitutional law which suggests (see *Amicus* Br. 16) that a taxing statute, valid when passed, is rendered invalid *nunc pro tunc* because at some later date the cost of collection exceeds gross revenue receipts.[25] That factor may raise a point appropriate for legislative reconsideration, but does not of its own force vitiate the statute.

B. *The Act gives fair notice as to the elements of criminal liability.* It cannot be said, as *amicus* argues, that the statute fails to give fair warning of the elements of criminal liability. The *amicus* contends that the statute on its face does not make sufficiently clear that the Internal Revenue Service and Bureau of Narcotics will not accept a pre-payment of the tax from unregistered persons, and thus that the statute as con-

[24] As pointed out in *Sonzinsky*, the occupational tax provisions of the National Firearms Act had yielded only $5,400 in 1934, and $4,400 in 1935 (300 U.S. 506, 514 n. 1) but the Court nevertheless upheld the measure as a valid regulatory tax statute.

[25] We further note that Congress *did*—contrary to the reading of the pertinent legislative history by the *amicus*—rely in part on the Commerce Power. See H. Rep., p. 3.

strued is unfair. Even if the premise were correct—which we dispute—the conclusion would not follow. The elements of the crime are clearly and succinctly set forth in the statute. Section 4744(a)(1) states in unequivocal language that it is a crime to purchase marihuana without having paid the tax, and Section 4744(a)(2) makes clear that it is a crime for a transferee who failed to pay the tax to transport marihuana. The elements of the crime are thus quite apparent. Whether or not the defendants were aware of the fact that the administrative agencies would not have accepted pre-payment of the transfer tax from unregistered persons does not detract from the fact they must have been aware that the statute made it illegal for them to purchase or transport marihuana on which they had not paid a transfer tax.[26]

C. *The tax provisions apply "uniformly" throughout the United States.* The *amicus* suggests (Br. 25) that the transfer tax violates Article I, Section 8,

[26] For the same reason, the suggestion (*Amicus* Br. 24–25, 26) that the construction placed upon the statute by the Internal Revenue Service and the Bureau of Narcotics was not clearly set forth in the Federal Register is not only incorrect but also irrelevant. The regulations which embody the construction placed on the statute by the administrative agencies were first published in the Federal Register in 1937 (2 Fed. Reg. 2054 *et seq.*) and were revised and re-published in 1964 (29 Fed. Reg. 3758 *et seq.*). In addition, as we have already shown above, whatever ambiguity might exist as to the policy adopted by the administrative agencies in carrying out the explicit intent of Congress on the question whether the tax may be pre-paid by nonregistrants, these defendants are chargeable with notice that the statutory provisions themselves made their conduct unlawful, since Section 4744(a) unambiguously makes it a crime to purchase marihuana without having paid the tax.

cl. 1, of the Constitution which provides that "all * * * Excises shall be uniform throughout the United States" because the rate of the tax imposed upon a transfer depends upon whether the transferee is registered ($1 per ounce) or unregistered ($100 per ounce), and because eligibility for registration—which is dependent upon state law—may vary from state to state. Although the rate of the tax does depend upon whether the transferee is registered, this purposeful classification applies in the same manner throughout the United States. The "uniformity" requirement demands no more than a "geographic" uniformity, *Knowlton* v. *Moore,* 178 U.S. 41, 98; *Fernandez* v. *Wiener,* 326 U.S. 340, 359, and in this sense, as to the respective classes of transferees, the statute applies uniformly.

We point out, furthermore, that the rate of the tax does not turn on the illegality of the transfer under state law. Compare *United States* v. *Constantine,* 296 U.S. 287. It is governed, rather, by whether or not the transferee is *registered.* While eligibility for registration does depend on state law, the $100 tax would apply, for example, to a professional pharmacist, who is eligible for registration but has not registered, and who nevertheless acquires marihuana.

Nor does the statute lack uniformity because some states might legislatively prohibit any legitimate dealing in marihuana (and thus, derivatively, preclude all registration), since it is well established that "a taxing statute does not fall short of the prescribed

uniformity because its operation and incidence may be affected by differences in state laws.''. *Fernandez, supra,* at 359.

CONCLUSION

For the reasons stated above, the judgment below dismissing the indictment should be reversed and the cause remanded for trial.

Respectfully submitted.

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NOVEMBER 1968.

APPENDIX

26 U.S.C. 4741 provides:

(a) Rate.

There shall be imposed upon all transfers of marihuana which are required by section 4742 to be carried out in pursuance of written order forms taxes at the following rates:

(1) Transfers to special taxpayers.

Upon each transfer to any person who has paid the special tax and registered under sections 4751 to 4753, inclusive, $1 per ounce of marihuana or fraction thereof.

(2) Transfers to others.

Upon each transfer to any person who has not paid the special tax and registered under sections 4751 to 4753, inclusive, $100 per ounce of marihuana or fraction thereof.

(b) By whom paid.

Such tax shall be paid by the transferee at the time of securing each order form and shall be in addition to the price of such form. Such transferee shall be liable for the tax imposed by this section but in the event that the transfer is made in violation of section 4742 without an order form and without payment of the transfer tax imposed by this section, the transferor shall also be liable for such tax.

26 U.S.C. 4742 provides in pertinent part:

Order forms.

(a) General requirement.

It shall be unlawful for any person, whether or not required to pay a special tax and register under sections 4751 to 4753, inclusive, to

transfer marihuana, except in pursuance of a written order of the person to whom such marihuana is transferred, on a form to be issued in blank for that purpose by the Secretary or his delegate.

* * * * *

(c) Supply.

The Secretary or his delegate shall cause suitable forms to be prepared for the purposes mentioned in this section and shall cause them to be distributed to each internal revenue district for sale. The price at which such forms shall be sold shall be fixed by the Secretary or his delegate, but shall not exceed 2 cents each. Whenever any of such forms are sold, the Secretary or his delegate shall cause the date of sale, the name and address of the proposed vendor, the name and address of the purchaser, and the amount of marihuana order to be plainly written or stamped thereon before delivering the same.

(d) Preservation.

Each such order form sold by the Secretary or his delegate shall be prepared to include an original and two copies, any one of which shall be admissible in evidence as an original. The original and one copy shall be given to the purchaser thereof. The original shall in turn be given by the purchaser thereof to any person who shall, in pursuance thereof, transfer marihuana to him and shall be preserved by such person for a period of 2 years so as to be readily accessible for inspection by an officer or employee mentioned in section 4773. The copy given to the purchaser shall be retained by the purchaser and preserved for a period of 2 years so as to be readily accessible to inspection by any officer or employee mentioned in section 4773. The second copy shall be pre-

served in the records of the internal revenue district.

* * * * *

26 U.S.C. 4743 provides:

> The stamps provided in section 4771(a)(1) for marihuana shall be affixed by the Secretary or his delegate to the original order form.

26 U.S.C. 4744 provides in pertinent part:

> (a) Persons in general.
>
> It shall be unlawful for any person who is a transferee required to pay the transfer tax imposed by section 4741(a)—
>
> (1) to acquire or otherwise obtain any marihuana without having paid such tax, or
>
> (2) to transport or conceal, or in any manner facilitate the transportation or concealment of, any marihuana so acquired or obtained.
>
> Proof that any person shall have had in his possession any marihuana and shall have failed, after reasonable notice and demand by the Secretary or his delegate, to produce the order form required by section 4742 to be retained by him shall be persumptive evidence of guilt under this subsection and of liability for the tax imposed by section 4741(a).

* * * * *

26 U.S.C. 4751 provides:

> Imposition of tax.
>
> Every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes, administers, or gives away marihuana shall before engaging in any of the above-mentioned activities and thereafter on or before July 1 of each year, pay the following special taxes respectively:
>
> (1) Importers, manufacturers, and compounders.

Importers, manufacturers, and compounders of marihuana, $24 a year;

(2) Producers.

Producers of marihuana (except those included within paragraph (4)), $1 a year, or fraction thereof, during which they engage in such activity;

(3) Physicians, dentists, veterinary surgeons, and other practitioners.

Physicians, dentists, veterinary surgeons, and other practitioners who distribute, dispense, give away, administer, or prescribe marihuana to patients upon whom they in the course of their professional practice are in attendance, $1 a year, or fraction thereof, during which they engage in any of such activities.

(4) Persons engaged in research, instruction, or analysis.

Any person not registered as an importer, manufacturer, producer, or compounder who obtains and uses marihuana in a laboratory for the purpose of research, instruction, or analysis, or who produces marihuana for any such purpose, $1 a year, or fraction thereof, during which he engages in such activities;

(5) Persons not otherwise taxed.

Any person who is not a physician, dentist, veterinary surgeon, or other practitioner and who deals in, dispenses, or gives away marihuana, $3 a year: *Provided,* That any person who has registered and paid the special tax as an importer, manufacturer, compounder, or producer, as required by paragraphs (1) and (2), may deal in, dispense, or give away marihuana imported, manufactured, compounded, or produced by him without further payment of the tax imposed by this section;

(6) Millers.

Any person who at a mill manufactures or produces from the plant Cannabis sativa L. any fiber or fiber products, $1 a year, or fraction thereof, during which he engages in such activities.

26 U.S.C. 4752 provides:

(a) Computation of tax.

Where a tax under paragraph (1) or (5) of section 4751 is payable on July 1 of any year it shall be computed for 1 year; where any such tax is payable on any other day it shall be computed proportionately from the first day of the month in which the liability for the tax accrued to the following July 1.

(b) Liability in case of activities in more than one place.

In the event that any person subject to a tax imposed by section 4751 engages in any of the activities enumerated in such section at more than one place, such person shall pay the tax with respect to each such place.

(c) Liability in case of more than one activity by same person at same time.

Except as otherwise provided, whenever more than one of the activities enumerated in section 4751 is carried on by the same person at the same time, such person shall pay the tax for each such activity, according to the respective rates prescribed.

26 U.S.C. 4753 provides in pertinent part:

(a) In general.

Any person subject to the tax imposed by section 4751 shall, upon payment of such tax, register his name or style and his place or places of business with the official in charge of the internal revenue district in which such place or places of business are located.

* * * * *

26 U.S.C. 4771 provides in pertinent part:

§ 4771. Stamps.

(a) Method of payment.

(1) Stamps.

The taxes imposed by sections 4701 and 4741 shall be represented by appropriate stamps, to be provided by the Secretary or his delegate.

* * * * *

26 U.S.C. 4773 provides:

§ 4773. Inspection of returns, order forms, and prescriptions.

The duplicate order forms and the prescriptions, including the written record of oral prescriptions, required to be preserved under the provisions of section 4705 (c)(2) and (e), and the order forms and copies thereof and the prescriptions and records required to be preserved under the provisions of section 4742, in addition to the statements or returns filed in the office of the official in charge of the internal revenue district under the provisions of sections 4732(b) or 4754, shall be open to inspection by officers and employees of the Treasury Department duly authorized for that purpose, and such officials of any State or Territory, or of any organized municipality therein, or of the District of Columbia, or any insular possession of the United States, as shall be charged with the enforcement of any law or municipal ordinance regulating the production of marihuana or regulating the sale, prescribing, dispensing, dealing in, or distribution of narcotic drugs or marihuana. The Secretary or his delegate is authorized to furnish, upon written request, certified copies of any of the said statements or returns filed in the office of any official in charge of an internal revenue district to any of such officials of any State or Territory or organized municipality therein, or the District of Columbia, or any insular possession of the United States as shall be entitled to inspect the said statements or returns filed in the office of the official in charge of the internal revenue dis-

trict, upon the payment of a fee of $1 for each 100 words or fraction thereof in the copy or copies so requested.

26 U.S.C. 4775 provides:

§ 4775. List of special taxpayers.

The Secretary or any officer or employee designated by him is authorized to furnish upon written request, to any person, a certified copy of the names of any or all persons who may be listed in the respective internal revenue districts as special taxpayers under the provisions of sections 4721 to 4726, inclusive, section 4702 (a), section 4751, or section 4752, upon payment of a fee of $1 for each 100 names or fraction therefore in the copy so requested.

26 U.S.C. 6107 provides:

§ 6107. List of special taxpayers for public inspection.

In the principal internal revenue office in each internal revenue district there shall be kept, for public inspection, an alphabetical list of the names of all persons who have paid special taxes under subtitle D or E within such district. Such list shall be prepared and kept pursuant to regulations prescribed by the Secretary or his delegate, and shall contain the time, place, and business for which such special taxes have been paid, and upon application of any prosecuting officer of any State, county, or municipality there shall be furnished to him a certified copy thereof, as of a public record, for which a fee of $1 for each 100 words or fraction thereof in the copy or copies so requested may be charged.

26 U.S.C. 7237 provides in pertinent part:

* * * * *

(e) Unlawful disclosure of information on returns and order forms.

Any person who shall disclose the information contained in the statements or returns required under section 4732(b) or 4754(a), in the duplicate order forms required under section 4705(e), or in the order forms or copies thereof referred to in section 4742(d), except—

(1) as expressly provided in section 4773,

(2) for the purpose of enforcing any law of the United States relating to narcotic drugs or marihuana, or

(3) for the purpose of enforcing any law of any State or Territory or the District of Columbia, or any insular possession of the United States, or ordinance of any organized municipality therein, regulating the sale, prescribing, dispensing, dealing in, or distribution of narcotic drugs or marihuana,

shall be fined not more than $2,000 or imprisoned not more than 5 years or both.

26 C.F.R. 152.19 provides:

Persons liable.

Liability to payment of special tax and registration attaches to every person who imports, manufactures, produces, compounds, sells, deals in, dispenses, prescribes, administers, or gives away marihuana. As to the liability of a person engaged in one or more of the foregoing activities to several taxes see § 152.29.

26 C.F.R. 152.20 provides:

Manner and time of registration.

Every person required to register pursuant to section 4753 shall execute and file, with the district director for the internal revenue district in which he proposes to engage in any activity mentioned in § 152.19, an application for registration on Form 678 and pay the special tax or taxes enumerated in § 152.29. Form 678 shall be executed by new applicants and approved by the district director before the ac-

tivity is commenced. Renewal applications shall be executed and filed on or before the succeeding July 1, and annually thereafter as long as liability is incurred. Form 678 may be obtained from the district director. For the purpose of the special tax imposed by section 4751, Form 678 shall be considered a return.

26 C.F.R. 152.22 provides:

Investigation of applicants other than millers.

(a) All new applications on Form 678 shall be referred by the district director to the appropriate narcotic district supervisor for investigation, report, and recommendation. Renewal applications on Form 678 shall also be referred by the district director to the appropriate narcotic district supervisor for investigation, report, and recommendation, if the district director is in doubt as to the applicant's being lawfully entitled to engage in the activity for which he seeks registration. The provisions of this section shall not apply in the case of any application to which the provisions of § 152.21 apply.

(b) In the case of applications which have been so referred, the district director shall not issue a special tax stamp in connection with any registration until information has been submitted to him, by the narcotic district supervisor, that the applicant is properly licensed or otherwise lawfully entitled to engage in the activity in the internal revenue district in which he seeks registration.

(c) All applications for registration that are referred to the narcotic district supervisor shall be returned by him to the district director with recommendation for approval or disapproval and, in case of disapproval, with a statement annexed concerning applicant's lack of license or qualification, to lawfully engage in the activity for which registration is sought. The appli-

cation together with any required statement shall be returned to the district director within 10 days from date of receipt of the application by the supervisor, unless a longer time shall be required within which to complete an investigation. In the latter event the district supervisor shall, upon or before the expiration of the said 10-day period, so notify the district director stating the estimated additional time required.

26 C.F.R. 152.23 provides:

Evidence of qualification.

The application of every person shall show that, under the laws of the jurisdiction in which he is operating or proposes to operate, he is legally qualified or lawfully entitled to engage in the activities for which registration is sought.

26 C.F.R. 152.30 provides:

Importers.

Every person who imports marihuana is subject to tax as an importer at the rate of $24 per annum in Class I. A manufacturer or compounder who is also an importer is not thereby required to pay more than one tax.

26 C.F.R. 152.31 provides:

Manufacturers and compounders.

Every person coming within the definition set out in § 152.11(b) is subject to tax as a manufacturer or compounder at the rate of $24 per annum in Class I.

26 C.F.R. 152.32 provides:

Producers.

Every person coming within the definition set out in § 152.11(c) is subject to tax as a producer at the rate of $1 per annum or fraction thereof in Class II.

26 C.F.R. 152.33 provides in pertinent part:

> Dealers.
>
> Generally, one who sells, gives away, or dispenses marihuana in any form, is subject to tax as a dealer at the rate of $3 per annum in Class III. * * *

26 C.F.R. 152.34 provides in pertinent part:

> Practitioners and interdistrict practice.
>
> (a) Physicians, dentists, veterinary surgeons, and other practitioners, including institutions, who prescribe, distribute, dispense, give away, or administer marihuana, and who are entitled to do so under the laws of the jurisdiction in which they practice, are subject to tax at the rate of $1 per annum or fraction thereof in Class IV.
>
> * * * * * *

26 C.F.R. 152.35 provides:

> Laboratory use.
>
> Chemists occupying an independent status and not that of employees, in other words, in business for themselves, who, being lawfully entitled so to do, make analyses of marihuana or use marihuana in analyzing other substances in a laboratory, and persons who produce or obtain and use in a laboratory any marihuana for the purpose of research, instruction, or analysis, if not registered as an importer, manufacturer, compounder, or producer, are subject to tax at the rate of $1 per annum or fraction thereof in Class V, provided no marihuana is manufactured or compounded for sale or for removal for consumption or sale.

26 C.F.R. 152.36 provides:

> Millers.
>
> Every person who at a mill manufactures or produces from the marihuana plant any fiber or fiber products is subject to tax as a miller at

the rate of $1 per annum or fraction thereof in Class VI.

26 C.F.R. 152.61 provides:

Scope of tax.

Except as otherwise provided, each transfer of marihuana to a person within the United States is subject to tax, to be paid in the manner hereinafter indicated. The tax is due whether the transferor be located within the United States or elsewhere. The tax applies to every transfer, no matter how often the same material may be transferred. It is no basis of exemption that a transferred article was produced from material on the transfer of which tax was paid.

26 C.F.R. 152.62 provides:

Amount of tax.

Where the transfer is to a taxable person who has duly registered and paid special tax, the transfer tax is at the rate of $1 per ounce or fraction thereof. If the transfer is to a person who has not registered and paid the special tax under this act, tax at the rate of $100 per ounce or fraction thereof is due.

26 C.F.R. 152.63 provides:

Method of payment.

The tax is paid by attachment of adhesive stamps to order forms as hereinafter shown. Stamps of various denominations are available. Payment for the stamps shall be made when application for the order form is submitted.

26 C.F.R. 152.64 provides:

Affixing and canceling of stamps.

The proper stamp, evidencing the payment of the transfer tax, shall be affixed to the original order form by the district director or his representative, and the person so affixing the stamp shall cancel it by writing or stamping thereon, in ink, his initials, and the day, month, and year, or shall, by cutting with a machine

or punch affix his initials and the date as aforesaid, in such manner as to render it unfit for reuse. The cancellation shall not so deface the stamp as to prevent its denomination and genuineness from being readily determined.

26 C.F.R. 152.65 provides:

Reuse of stamps prohibited.

A stamp once affixed to one order form cannot lawfully be removed and affixed to another. As to refunds for amounts paid for stamps, see § 152.124.

26 C.F.R. 152.66 provides:

Written order required for transfer of marihuana.

Except as otherwise provided, every person seeking to obtain marihuana shall make application on Form 679a (Marihuana) to the district director of internal revenue for the district in which the transferee is located for the purchase of an order form. The application shall show (a) the transferee's name, address, and, if registered, the registration number, (b) the name and address of the transferor, and (c) a description, including quantities, of the desired articles or materials to be transferred. The application must be accompanied by a check, cash, or money order in payment of the transfer tax (see § 152.62), plus 2 cents in payment for the order form.

26 C.F.R. 152.67 provides:

Signing of application.

Generally, applications for order forms shall be signed by the same person or persons signing the application for registration (see § 152.25). However, when it is impracticable for the person signing the application for registration to sign the applications for order forms they may be signed by another person, provided a power of attorney authorizing such other person to sign the applications for order forms has

previously been filed with and approved by the district director. The power of attorney shall be executed on Form 1315, or a substantially similar form, in the same manner as applications for registration, shall show the signature of the person thereby authorized to sign applications for order forms, and shall affirm that the signature as shown is his signature.

26 C.F.R. 152.68 provides:

Signatures to be compared.

Upon receipt by the district director of an application for an order form the signature on such application shall be compared with that appearing on the application for registration or in the power of attorney (see § 152.67). Unless the district director is satisfied that the application is authentic it will not be honored.

26 C.F.R. 152.105 provides:

Records open to inspection.

All order forms, duplicate forms, prescription records, returns, and inventories required under the provisions of subchapter A, chapter 39, relating to marihuana, or the regulations in this part to be kept on file shall be kept so that they can be readily inspected.

26 C.F.R. 152.131 provides:

List of taxpayers.

The list of marihuana special-tax payers required by section 6107, shall be kept on Record 10, and may be inspected and copied in the district director's office at such reasonable and proper times as not to interfere with the district director's use of it, or exclude other persons from inspecting it.

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